Previous references.

Cs 167-09

1909.

(Courts)

File No. 231-Co

Serial Nos. 1-2

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-2

Part B. for [illegible]

SUBJECT.

Memorial of Kabini, convicted of murder and sentenced to transportation for life by the Civil Court

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Table of Contents

1. From the Registrar Cl. No. R 6642/283 dt. 6.6.09 Forwards the above memorial praying for mercy—
2. Do. Do. Cl. No. 3457 dt. 16.6.11 Submits, the recommendation of Sentence to one of ten years R.I.—

G.R.S. 11] 190 - 11

GENERAL AND REVENUE SECRETARIAT.

Courts)

NOTES.

Cts. File No. 231-10

FILE HEADING.

Memorial of Kapini, Convicted of murde and Sentenced to transportation for life by the Chief Court in appeal.

From

The Registrar, Chief Court of Mysore

No. 4642/283 Dated 6-4-1911. Received 11-4-11.

Diary No. J257 | Enclos. 1 & 7 Encs. | Spare Copies | Serial No. 1

BRIEF ABSTRACT OF LETTER.

Forwards a memorial addressed to H.H. the Maharaja by Kapani, praying for the remission of the Sentence of transportation for life passed on him by the Chief Court.

1 NOTES AND ORDERS.

Filed The memorialist Kapini along with another by name Thimmala ~~was~~ was prosecuted before the Sessions Judge Mysore Division, for the offence of murder and they both were acquitted by him.

NOTES—First sheet

GPB—15,000—24-4-09.

G. R. S. 12]
General and Revenue Secretariat.

Cts. File No. 231 of 1910-11.

Serial No.

H.C.O

The Govt having in their order No J 2505-7-Cts 67-09-3 of 25-2-1910, preferred an appeal against the order of acquittal the Chief Court found the accused Kapana guilty and sentenced him to transportation for life The memorialist now prays for the remission of the sentence

Subd for orders.

HCJ (122)
12-4-11.
SW (11)
13/4/11

2) The guilt of the petitioner seems to have been satisfactorily proved The learned Sessions Judge who acquitted him did so not because he found he was innocent but because there was a considerable amount of falsehood in the evidence tendered against him by the prosecution. He therefore allowed him the benefit of the doubt.

3) The learned judges of the Chief Court are of opinion that the guilt of Kapana has been completely established They attach great weight to the two confessions made by him and accepted as substantially true the story of the sale by him of his earnings at Beligalla a day

NOTE—Contn. sheet.

GPB—50,000—12-8-10

G. R. S. 12]
General and Revenue Secretariat.

Ct File No. 231 of 1910-11

Serial No.

after the occurence They also accept this receipt it as genuine ~~on this~~ because Kapani admitted Even at the Sessions that he did Execute a receipt attested by Viachan for the sale of what he Stated to be his wife's jewels It is also pointed out that the Sessions judge has ~~him~~ himself found it impossible to disbelieve Entirely the Confession made by Kapani and has been forced to remark that there is "a ring of truth" about it It may be added that in paras 15 ~~& 16~~, the 1st Sessions Judge proceeds to relate how according to his view the deceased must have met his death at the hands of Thinmala and Kapani in a Sudden Encounter in which ~~Reading~~ the prisons fall the three boys were Suddenly roused Post reading the Confession as a whole the impression left on the mind is that Thinmala, who it will be remembered had planned ~~arranged~~ with Kapani the murder of Thinma deliberately picked a quarrel in order to create the opportunity he so much desired The Subject of Thinma Carrying away a large Share of Stolen

NOTE— Contn. sheet.

GPB—50,000—12-8-10

Serial No.

Vegetables than properly belonged to ~~him~~ him. Seems to have been started by Thirumala with this ~~subject~~ object.

4) In any Case both the Sessions Judge and the judges of the Ch. Ct are agreed that Kappan was immediately concerned in the murder of Thirumala and as in Consideration of his youth (he is 25 years of age) and the fact that the police have not placed before the Court the full details Connected with the Case only the lesser penalty of transportation for life has been awarded there Seems to be no Case for interference

[If the learned Sessions Judge's version of the occurrence is accepted, perhaps a ~~less~~ lighter sentence would meet the ends of justice.

28/4/11 SH]

18/4/11. SH

Sec'y 5 There seem to ~~be~~ no adequate grounds for the ~~exercise~~ reduction of the sentence passed by the Chief Court.

2nd C'y

20/4/11

1982.

Recorded

I have ~~some~~ doubts about the sufficiency of the evidence; but as the Judges have convicted SH 20/4/

GPB—50,000—12-8-10

Serial No.

the accused, [redacted], I do not consider it useful to comment at length on the evidence. I am still of opinion that there is considerable force in the criticisms of the Less. Judge The two Confessional Statements are too long and elaborate, and they agree with each other so substantially that it is difficult for me to believe that they are not due to ~~dictation~~ tutoring by the Police. ~~The discovery of the jewels~~ rings and their being The story of the Connection of the rings &c of the deceased boy being sold and recovered is also one that I cannot persuade myself to believe. With great deference to the Hon. Court, I cannot help expressing my preference to the Less. Judge's judgment

GPB—50,000—12-8-10

Serial No.

If it were an ordinary case, I should not have taken the course of suggesting that we should differ from a verdict arrived at by the Chief Court on appeal by Govt. But the conviction on a doubtful charge of murder is such a serious matter that we would be justified in disregarding ordinary conventions to some extent.

We can do nothing to reverse the conviction, but we may ameliorate the lot of the prisoner by a substantial reduction of sentence.

I may add that there is little fairness in taking advantage of ~~certain~~ the discounting remarks of a judge ~~being taken~~ almost as if they weighed as admissions against the party in whose favour a decision is given. In my opinion, the

Serial No.

made by the Sess. Judge

Concessions, are somewhat larger than need have been made in the circumstances of the case. It may be that these accused did commit the murder, but where the greater part of the evidence is rejected as being untrustworthy, it would be most hazardous for a judicial tribunal to convert moral suspicion into legal conviction.

21/4/11

Circulate

22/4/11

22/4/11

(Cl Section)

2812
26-4-11

No motive for the crime has been proved. The one put forward by the prosecution is not sufficient to account for the diabolical crime of murder. Or the

NOTE— Contn. sheet.

GPB—50,000—12-8-10

Serial No.

Other hand, it is quite possible that the lad was murdered in a sudden fit of anger as he threatened to expose the thefts committed by the two accused persons. vide para 15 of the order of the Sessions Judge. This explanation is much more probable than the one offered by the prosecution.

I am aware that we are not to sit in judgment on the verdict of the Chief Court but have to consider if there are any extenuating circumstances in the case calling for the exercise of the Royal prerogative of mercy. But reading the evidence I am constrained to say that the case is involved in doubt which has not been cleared up and that the Sessions Judge's judgment takes a correct view of the case as a whole. In this view, I am

GPB—50,000—12-8-10

G. R. S. 12]
General and Revenue Secretariat.

File No. of 19

Serial No.

respectfully of the opinion that the sentence of life long transportation may be commuted into one of a few years' hard labor. The memorialist is only 25 years old and his youth & inexperience may be pleaded in extenuation of his conduct

KBK
26/4/11

Dewan.

CSB
26/4/11

11301
26.4.11

GPB—50,000—12-8-10

Submitted to His Highness.

Prisoner under detainment

I submit the memorial of Kapini praying for the remission of the sentence of transportation for life passed on him by the Chief Court.

2. The memorialist and Tirumala (aged 25 and 24 years respectively) were charged by the First Class Magistrate of Saklespur with having murdered one Thimma on 10th July 1909. The Sessions Judge, Mysore Division, acquitted both the accused. At the instance of the District Magistrate of Hassan District, the Government Advocate was directed in Government Order No.J.2505-7/Cts. 167-09-3 dated 25th February 1910 to prefer an appeal to the Chief Court against the order of acquittal passed by the Sessions Judge. The Chief Court dismissed the appeal against Tirumala's acquittal but reversed the order of acquittal as against Kapini (the memorialist) by finding him guilty of the murder of Thimma and sentenced him to be transported for life.

3. The memorialist prays for the remission of sentence passed by the Chief Court. He states that for fear of the Police he had to admit guilt before the Magistrate who dealt with the case, that this explanation

was accepted by the Sessions Judge when he ordered his acquittal, that the Chief Court punished him in appeal preferred by the Police and that he had no manner of relationship or connection with the murdered Thimma.

4. In his confession statement before the Treasury Assistant Commissioner and First Class Magistrate, Kadur District, the memorialist admitted that he and Tirumala murdered Thimma. He stated also his motive in being privy to the deed. He admitted the guilt before the Committing Magistrate, but he retracted these statements in the Sessions Court.

5. The Sessions Judge gave the benefit of doubt and ordered the acquittal of Kapini not because he was considered to be innocent but because the Court found that most of the prosecution evidence was false and fabricated and that portions of the withdrawn confession statement indeed reflected "the truth of the case".

6. The Chief Court has attached importance to the statement originally made by the memorialist at great length before the First Class Magistrate of the Kadur District and repeated in still greater detail before the Committing Magistrate. The Chief Court has held that Kapini "took part in the murder of the boy Thimma" and "having regard to the youth of the accused, we think that we are

justified in awarding the minor punishment which is allowed by law".

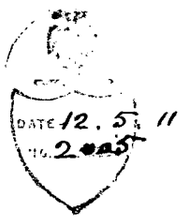
7. The Second Councillor evidently disagreeing altogether with the conviction of the memorialist proceeds to observe that "we can do nothing to reverse the conviction but we may ameliorate the lot of the prisoner by a substantial reduction of sentence". The First Councillor is of opinion that no motive for murder has been proved, that the motive suggested is inadequate and that on the other hand the probability is that the deceased was murdered in a sudden fit of anger. To his mind it appears that the case is involved in doubt and that the memorialist was properly acquitted by the Sessions Judge. The First Councillor adds that "the sentence of life long transportation may be commuted into one of a few years' hard labour".

8. The Chief Court has not suggested that a mitigation of the sentence is called for in the case.

9. It does not seem to me to be open to His Highness to call the verdict of the Chief Court in question. There is no extenuating circumstance in the case except the youthfulness of the memorialist, and on account of this the Chief Court have selected the lesser of the punishments provided by the law.

Record of Cases submitted for the Orders of His Highness the Maharaja

Subject.



Memorial of Kapini, convicted of murder, praying for the remission of the sentence of transportation for life passed on him.

Order.

No. 708

Br III

This is a somewhat peculiar case and without questioning the verdict of the Chief Court, I think it may fairly be argued that the convict Kapini was not the ring-leader in the affair and also that the murder in which he was concerned was not premeditated but was committed during the course of a sudden quarrel. No adequate motive has been proved for a deliberate murder. I have decided (on these considerations) to reduce Kapini's sentence to one of ten years Rigorous Imprisonment.

23/5/11

G. R. S. 12]
General and Revenue Secretariat.

Cb. File No. 231 of 1910-11.

Serial No.	
	Submitted with the usual drafts.
	HC&S (122) 30-5-11.
	(68) 30/5/11
	30/5/11
	See)
	Submitted with fair copy for signature.
	Devan)
	30/5/11 Fair signed by Dewan.
	31/5/11
	11884 1.6.11
	Issue
	C&S 4/6/11
	15/6/11
2	To the Registrar Chief Court No. 3457 dt. 4.6.11 Forwards a copy of His Highness' orders reducing the Sentences to ten years' rigorous imprisonment

NOTE—Contn. sheet.

GPB—50,000—12-8-10

No. 4642/283 Revised Records.

J 2577

CHIEF COURT OF MYSORE
BANGALORE.
Dated 6th April 1911.

Serial 1.

From,

The Registrar of the Chief Court of Mysore,

B A N G A L O R E

To,

The Secretary to the
Government of Mysore,
General and Revenue Departments.

Sir,

I am directed to forward a Memorial addressed th His Highness the Maharaja of Mysore by Kapini, 2nd accused in Hassan Sessions case No. 1 of 1909-10 on the file of the Sessions Judge Mysore, and 2nd Respondent in Criminal Appeal No. 96 of 1909-10 on the file of this Court.

The entire records of the case are herewith forward-
-ed.

I have the honor to be,
Sir,
Your most obedient servant

Registrar.

ಆರೋಪಿಯ ಪರವಾಗಿ ಅಡ್ವೊಕೇಟ್ ಶ್ರೀ ಎಂ. ಶಂಕರನಾರಾಯಣ ಅಯ್ಯರ್ ಅವರು ಹಾಜರಾದರು.

ಸರ್ಕಾರದ ಪರವಾಗಿ ಅಡ್ವೊಕೇಟ್ ಜನರಲ್ ಶ್ರೀ ಎಂ. ಸಿ. ಕೃಷ್ಣಯ್ಯಂಗಾರ್ ಅವರು ಹಾಜರಾದರು.

ಈ ಅಪೀಲು ಹಾಸನ ಸೆಷನ್ಸ್ ಕೇಸ್ ನಂ. 1 of 1909 ರಲ್ಲಿ ಸೆಷನ್ಸ್ ನ್ಯಾಯಾಧೀಶರು 4409 ನೇ ನಂಬರಿನ ಕ್ರಿಮಿನಲ್ ಅಪೀಲ್ ಕೇಸಿನಲ್ಲಿ ಮೈಸೂರಿನ ಚೀಫ್ ಕೋರ್ಟಿಗೆ ಕಳುಹಿಸಿದ್ದಾರೆ. (Accused in Hassan Sessions Case No. 1 of 1909 to the Criminal Appeal No. 96 of 1909 to the file of the Chief Court of Mysore.)

ಈ ಕೇಸಿನಲ್ಲಿ ಆರೋಪಿಯು ಮಾಡಿರುವ ಅಪೀಲಿಗೆ ಕಾರಣವೇನೆಂದರೆ — ಅವನಿಗೆ ವಿಧಿಸಿರುವ ಶಿಕ್ಷೆಯು ಅತಿಯಾಗಿದೆಯೆಂದು ಹೇಳಿಕೊಂಡಿದ್ದಾನೆ. ಆದರೆ ಅಪರಾಧವು ಅತ್ಯಂತ ಘೋರವಾಗಿರುವುದರಿಂದ ಈ ಶಿಕ್ಷೆಯು ಅತಿಯಾಗಿದೆಯೆಂದು ಹೇಳಲಾಗುವುದಿಲ್ಲ.

ಈ ಕೇಸಿನಲ್ಲಿ ಆರೋಪಿಯು ಮಾಡಿರುವ ಅಪೀಲಿಗೆ ಕಾರಣವೇನೆಂದರೆ —

Left thumb

Mark

Of Pr. No. 4409 Kapaun

Stated and marked before me

27/3/1911

Chief Jailor

Central Jail

Bangalore

In the Chief Court of Mysore at Bangalore

Monday the 15th day of August 1910

Present:

Mr. Justice Stanley Isaac, B.A.I.
and. Chief Judge

Mr. Justice T. S. Chandrashekhara Iyer
Offg. Judge.

Criminal Appeal No: 96 of 1909-10

The Government of Mysore
(By Mr. S. Narayana Rao
Government Advocate) } Appellant

V.

1. Timmala
2. Thapsia
(1st by Mr. S. Narasimha Iyengar) } Respondents.

Appeal

Appeal against the order of acquittal passed by the Sessions Judge of Mysore in Hassan Sessions Case No. 1 of 1909-10.

This appeal coming on for hearing on Friday the 12th day of August 1910, the Court delivered the following.

Judgment.

This is an appeal by the Government from an order passed by the Sessions Judge of the Mysore Division acquitting the Respondents Timmala and Kapini on a charge of having murdered Thimma, the cousin of the former accused.

The facts of the case are set out in detail in the Judgment of

of the Sessions Court and need not be recapitulated. The learned Judge disagreeing with the assessors has given the benefit of the doubt to the Respondents.

Both the Government Advocate and the Advocate who has appeared for the defence have stated very fairly all the arguments for and against a conviction, and we may say at once that in the case of the accused Tirimala we accept the finding of the Sessions Judge as a correct finding. The circumstances of the case no doubt raise a strong suspicion that he had a hand in the murder which could hardly

has

has been the work of one man.
We see no reason to doubt the evidence
of Luiza (P.W.4) the mother of the
murdered boy, to the effect that on
the Saturday evening (July 10th 1909)
Thumma and Sirimala left the house
together. We also accept as reliable
the statements of Dundga (P.W. 24)
and Gella (P.W. 26) to the effect that
later on in the same evening both the
accused were seen in company with
Thumma at the Veralkadu temple
which is apparently some 200 or 300
yards distant from the house where
Thummala and Thumma lived, and
at no great distance from the spot
where the murder was committed.

From

From the fact deposed to by the Hospital Assistant (Exhibit S) that food only partly digested was found in the stomach at the Post-Mortem Examination it may be assumed that the murder took place at an early hour of the night. As against Sirimala, then, we have the facts that he was seen in the company of the murdered boy shortly before the murder and that he is implicated by the second accused Kapini in two confessions (Exhibits U and V) which were retracted at the trial. Obviously a confession which is retracted cannot carry the same weight as against a person other than the

the maker as a confession which is not retracted for the reason that the maker must have lied on one or on the other occasion and having regard to the fact that as against Ferinala no motive for the murder is disclosed. We do not see our way to dissent from the finding at which the Sessions Judge has arrived.

The case of the accused Kapini stands on a different footing altogether. The learned Judge discredits the evidence to the effect that the two accused were seen at the Veerabhadra temple in company with Thimma on the Saturday evening chiefly because the temple is not kept open

at

at night-time. We do not see much force in this objection. If the witnesses had been closely questioned it would probably have been elicited that they were seated in front of the temple outside the door or they might have been in a position to explain why the door was open on that particular evening. The evidence connected with the discovery of articles 17. 18 + 19 may or may not be true. We do not doubt that these articles viz., a cotton waist-belt, a sickle (chopper) and a stone to which blood and hair were adhering were found in the places in which they are said to have been found,

but

but we are not sure that the articles were discovered in consequence of any statement made by the accused Kapini

As regards the recovery of the six sarongs (articles 11 to 16) which are identified by Luigi (P.W. 4) as having been always worn by her son Thimma, we are unable to follow the reasoning of the Sessions Judge. It is in evidence that on the 12th July Kapini left Kalyanpur taking with him the articles above mentioned as also a number of ornaments belonging to his wife (articles 21 to 27) and went to Bettadalur where he offered all the jewellery for sale

He

He was accompanied by Jnadivala Ranga (P. W. 20) and by one Samabba who has not been called as a witness. At Bellaadalu the ornaments were weighed by Virachari (P. W. 22) and with the exception of article 25 which was purchased by Samabba all the ornaments were bought by Sambe Gowda (P. W. 21) A receipt (Exhibit A) was written by Thimma Setty (P. W. 23) to which the accused Kapini affixed his thumb mark. No doubt Sambe Gowda when examined as a witness at the trial denied that articles 11 to 16 were the ear-rings which he purchased from Kapini and which were afterwards recovered from his

his person by the Police Jamadar Ramanna (P.W. 11) but his denial is obviously false. The learned Judge has discredited all this evidence on account of certain discrepancies, which are intrinsically unimportant. He also doubts the genuineness of Exhl. H because the portion relating to the sale of the silver bangles (articles 26 & 27) was admittedly written in afterwards. But this interpolation appears to us to be very satisfactorily explained and, as pointed out by one of the assessors, that part of the receipt which relates to the sale of the ear-rings is above suspicion

Finally

Finally, we have the Confessions of Kapini. The first was made at great length before a Magistrate of the Kaduna District on the 26th July and this was repeated in still greater detail before the Committing Magistrate on the 20th August. It is next to impossible to believe that these Confessions are wholly false and even the Sessions Judge is constrained to admit, that, in part "they have a genuine ring of truth". When examined at the trial Kapini tried to make out that articles 11 to 16 belonged to him and were taken by the Police from his ears and not from the ears of Saube Gwonda. He admitted that

that a receipt for his wife's ornaments which he had sold to Sambe Gowda was actually written by Thimma Gowda (meaning apparently Thimma Setty P.W. 23 and that the receipt was altered by Viracharu (P.W. 22), but he tried to make out that the police had fabricated a new and false receipt. Curiously enough the Sessions Judge did not ask him whether he admitted or denied the genuineness of his thumb mark on Exhd. H. the identity of which was susceptible of proof. On a careful consideration of the entire record we have no doubt but that the accused Kapini took part in the murder of the boy Thimma and we make that all the assessors were of the same opinion.

Here

There is however a great deal in the case which has not come to light - and under these circumstances and having regard to the youth of the accused we think that we are justified in awarding the minor punishment which is allowed by law.

As against the accused Thuraiya the appeal is dismissed As against the accused Kapini, the appeal is allowed and the order of acquittal is set-aside. We find the accused Kapini guilty of Murder being an offence punishable under Section 302 of the Penal Code and we direct that he

he be transported for life. The order of the Sessions Judge to the effect that articles 11 to 16 shall be confiscated to Government is reversed and in lieu thereof we direct that the said articles be made over to Linga the mother of the murdered boy.

(Signed) S. Sivaji, Chief Judge.

(Signed) K. S. Chandrashekhara Iyer
Judge.

"True copy"

Examined by

Dy: Registrar

Date of application 22-3-11
When stamps were called for —
When stamps were deposited —
—do— Copy was ready 23-3-11
—do— Copy was delivered 24-3-11
Charges of copying, Hand paper. Rs 1-6-0

Courts file N 231-10.
S. N. 2.

No. J 3457 Encl 1 & 1 packet

MYSORE GOVT. GEN. & REV. SECRETARIAT.

Dated Bangalore. 16th June 1910

16

From

The Secretary to the Government of H. H. the Maharaja of Mysore.

To

The Registrar of the Chief Court of Mysore.

SIR,

I am directed to forward herewith for information of the Judges of the Chief Court and for communication to the prisoner Kapini, Respondent in Criminal Appeal No 96 of 1909-10 on the file of the Chief Court undergoing sentence of transportation for life in the Bangalore Central Jail, a copy of the order passed by H. H. the Maharaja of Mysore, on the prisoner's memorial praying for the remission of the ~~Sentence~~ sentence of transportation for life passed on him by the Chief Court.

2. The entire records received with your letter No. 4642—283 dated 6th April 1910 are herewith returned.

I have the honor to be,

SIR,

Your most obedient servant,

for Secretary.

Dy Regr (Crl) 30/5/11

30/5/11

In the Matter of a Memorial

from Kapini, ~~accused in Mysore Sessions Case No of 1909-10~~, praying for the remission of the sentence of transportation for life passed on him by the Chief Court in Criminal appeal N° 96 of 1909-10, ~~xxx~~ against the order of his acquittal passed by the Sessions Judge, Mysore Dt. ~~Hassan~~ in Sessions Case N° 1 of 1909-10.

His Highness the Maharaja

has been pleased to pass the following

Order.

"I have decided to reduce Kapini's sentence to one of ten years rigorous imprisonment."

Dated 23.5.1911

Dewan of Mysore

CSB
31/5/11

Draft.
HCS (122)
30.5.11.

30/5/11